

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3486 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HEIRS OF LAKABHAI MOTIBHAI

VS

STATE OF GUJARAT  
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Appearance:

MR ARUN H MEHTA for Petitioners

Mr. A.J. Desai, learned Asst. Government Pleader  
for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 12/08/96

ORAL JUDGEMENT

Petitioners, apprehending that their land is likely to be auctioned without following the procedure established under the law, approached this Court. This Court issued notice returnable on 16.7.85 and granted ad-interim relief on 27.6.85. It appears that thereafter the matter was adjourned on few occasions. Fresh notice to respondents No. 2 and 3, returnable on 20.8.85, was also ordered by this Court on 8.8.1985. Even then, none appeared on behalf of the respondents and, therefore, on

20.8.1985, this Court, observing that though served, no one appeared on behalf of the respondents, issued Rule and ordered ad-interim relief to continue till further orders. Till today, the respondents have not filed any reply to this petition.

It appears that the petitioners were cultivating land belonging to Limdi Thakore. In view of the land reforms, they were required to pay six times the assessment to the Government to acquire occupancy rights. Petitioners have averred that their forefathers did not pay the amount, and, therefore, proceedings were initiated for confiscation of the land to the State Government, and ultimately, entry of "Sarkari Padtar" i.e. Government vest land was made in the records pertaining to the land in question, without giving any notice to the petitioners. As order was passed without hearing the affected parties, the petitioners approached the appellate officer, viz: Assistant Collector, Dholka, by preferring an Appeal No. 2 of 1984 and the appellate officer being satisfied with the contentions raised by the appellants, passed an order on 19.6.1984, remanding the matter with a direction to decide the matter afresh after giving notice to the petitioners.

There is no final decision confiscating the land to the Government or abolishing of the occupancy rights. However, the petitioners were informed by Secretary-cum-Talati of Alu Panchayat that the land is going to be auctioned and is to be given over to someone else on 28th June 1985. In paragraph 6 of the petition, the petitioners have averred that "no notice of any kind has been served upon the petitioners", and hence they have filed the present petition.

Presumably being satisfied with the order passed by this Court, the petitioners have not placed on record as to what happened subsequently. They ought to have placed on record as to what has happened in the matter thereafter, i.e. whether the auction actually took place or not, whether any proceedings pursuant to remanding of the matter by the appellate officer were initiated or not, etc.

Surprisingly, on behalf of the State, averments made in the petition are not controverted. If there was no intention on the part of the State Government to auction the land in question, an affidavit to that effect could have been filed before this Court, pointing out that the averments made in the petition are not true and the State is not intending to auction the land of the

petitioners in the manner in which it is averred in the petition. The State could have pointed out that if in view of the decision taken after issuance of notice to the petitioner, land is required to be auctioned, the same is being auctioned. The State has remained silent in the matter. The Court has not restrained the respondents from taking action in accordance with law. On the contrary, it was the duty of the respondents to proceed as per the order passed by the Assistant Collector whereby the matter was remanded. The State has kept the Court in dark. It was the duty of the officer concerned, more so when even name is mentioned in the petition, to state before the Court whether the averments made in the petition are true or not. As the averments are not denied, the same are to be accepted. Even before this Court, nothing is placed on record to point out as to whether the auction which was proposed to be held was in accordance with law or not.

In the result, the petition is allowed. It is directed that appropriate orders shall be passed after following the procedure laid down under the law. The Court has to allow this petition because the respondents have not filed any reply affidavit in this matter, and even the learned Assistant Government Pleader is kept in the dark. It is hightime to deprecate the action of such respondents. Therefore, it is directed that the respondents shall pay cost of Rs.1000/- (Rupees one thousand only) to the petitioner and the cost shall be recovered from the the pocket of the erring officer.

We are constrained to observe that in several matters it has been found that the State does not file replies, neither at the first stage of issuance of notice, nor after Rule is issued, nor till the matter is heard finally.

Rule made absolute accordingly.

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